

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 323 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MIHIR TEXTILES LIMITED

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 24/01/2000

ORAL JUDGEMENT (Per : J.N.Bhatt, J)

1. For the relevant Assessment Year 1977-78,

Income-tax Appellate Tribunal, at the instance of the department- Revenue, forwarded following question for our opinion under Sec.256(1) of the Income-tax Act, 1961 :-

(1) Whether on the facts and circumstances of the case, the appellate Tribunal has been right in law in holding that the assessee is entitled to interest under sec.214 from 1.4.1977 to the date of orders, namely (a) provisional assessment, (b) order under sec.143(3), and (c) rectification order under sec. 154 of the Income-tax Act, 1961 ?

(2) Whether regular assessment occurring in sec.214 of the Income-tax Act,1961 includes order of re-assessment and/or order of rectification also for the purpose of interest under the said section.

2. It appears from the statements of facts that this is a case of claim for interest under sec.214 of the Income-tax Act,1961. (hereinafter referred to as the I.T.Act). The assessee had paid an advance tax and a provisional assessment was made on 14.2.1978 which entitled it to a refund of Rs. 3692-00. Subsequently, on 27.9.1980, an assessment under sec.143(3) came to be made which entitled the assessee to a further refund of Rs. 1,54,407-00. Again on 14.12.1981, ITO granted further refund of Rs.1,22,422-00 by a rectification order under sec.154 of the I.T.Act.

3. The concerned ITO granted interest on the refund amounts only from 1.4.1977 to 14.2.1978, in other words, from the date of the provisional assessment. The claim of the assessee is that he should have been granted the interest on the amounts which became due to him on the refunds upto the date of refund orders and not only upto the date of provisional assessment.

4. The observations of the CIT (Appeals) are pertinent requiring mention at this juncture :-

" The ITO appears to have allowed interest upto the date of regular assessment. But if he has not done so, he is directed to look into the same and allow interest as may be admissible upto the date of regular asstt. The appellant's plea that it should be allowed interest upto the date of order passed u/s 154 cannot be accepted in

view of clear provisions of the law."

5. Upon considering facts and circumstances and various decisions of the High Court, the Tribunal held that the interest is allowable upto the date of rectification order for which Tribunal relied on Board's Circular.

6. The Tribunal, ultimately, held that the interest is payable to the assessee on the various amounts from 1.4.1977, upto the date of order which entitled the assessee to the amounts, (a) on provisional assessment, and (b) on an order u/s 143(3), and (c) on rectification order.

7. After having heard and considering the facts, the Tribunal referred above-two questions before us for our opinion by his order dated 29.6.1984 in respect of the Assessment Year 1977-78.

8. Our attention was invited by the learned counsel for the Central Government Mr. Bhatt to a decision of the Hon'ble Supreme Court rendered in "Modi Industries Ltd. v/s CTI, 216 ITR 759. " After considering the discussion in the aforesaid decision and the facts of the present case and the impugned order, we are of the clear opinion that the ratio propounded in Modi Industries (supra) case, squarely, applies to the facts of the present case and, therefore, reference is required to be allowed accordingly.

9. In the result, Reference for our opinion is decided in favour of Revenue and against the assessee for the relevant Assessment Year 1977-78. Accordingly, this reference shall stand disposed of with no order as to costs.

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